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The Department of Social and Health Services, Medical Assistance Administration, did not provide the State Auditor's Office reliable, timely records for our audit of services provided to undocumented aliens.

Background

As a requirement for receiving federal Medicaid funds (CFDA 93.778), the Department of Social and Health Services must provide medical benefits to three groups: otherwise eligible residents of the United States who are citizens; aliens lawfully admitted for permanent residence; and certain aliens granted lawful temporary resident status. Undocumented aliens are not included in these three groups.

In most cases, if a state chooses to provide medical services to undocumented aliens, it must use its own funds. Federal Medicaid matching funds are available only if the medical services provided are the result of an emergency situation, including obstetrical services at the time of delivery. Emergency medical services are defined in the U.S. Code of Federal Regulations and the Medicaid State Plan. Non-emergency medical services provided to undocumented aliens cannot be charged to the federal government. The Department and the federal government define "emergency medical condition" as the sudden onset of a medical condition so severe that, without immediate medical attention, it would be expected that there would be serious jeopardy to a person's health; serious impairment of bodily functions; or a serious dysfunction of a bodily organ or part.

During our previous audit, Department records showed that 9,717 undocumented aliens received medical services from July 2002 through December 2002. Based on our risk analysis, we selected 169 of these patients in six service categories to determine whether all Medicaid-funded services provided were emergencies as defined by the law.

We found that non-emergency procedures, routine medical services, and durable medical equipment were provided to undocumented aliens and paid for with Medicaid funds. We found payments for adult day care, massages, dental fillings, routine eye exams, regular office visits and in-home care, as well as supervision of normal pregnancies and routine postpartum follow-up. Medicaid payments were made for eyeglasses and contact lenses, breast pumps, dentures, contraceptive devices, disposable incontinence garments, and replacement wheels for wheelchairs. We found payments for conditions such as menopause, cough, breast engorgement, and nearsightedness. As a result, we questioned \$1,342,420 in state and federal costs.

Description of Condition

We reviewed this area again during our current audit, using data from the Department's Medicaid Management Information System. Department records showed that from July 2003 through December 2003, 12,119 undocumented aliens received medical services, an increase of 25 percent from the same six-month period in the previous year.

In an effort to test these services, we selected five categories that had been included in tests the previous year and that did not appear to conform to the federal government's definition of "emergency medical condition". These categories were: adult day care, nursing home care, in-home care, personal care and dental services. We found a total of 5763 clients in those categories. Using valid sampling techniques, we selected 347 clients for review. We attempted to evaluate internal controls and compliance with federal regulations with the limited information made available to us by Department staff. We encountered several difficulties with obtaining access to information for this audit, as follows:

- We were unable to independently interview line staff at the Medical Assistance Administration's Division of Medical Management, which is composed of physicians with the authority to approve medical procedures. All information given to us for this area was filtered through the Administration's Business and Finance Division. We were informed by staff in certain areas of the Administration that we had to be granted permission from management to speak with them. Despite our requests, we were never granted permission to speak with Division of Medical Management staff members and were unable to independently corroborate information about internal controls or about clients that the Division may have approved for emergency services. With the exception of the original data transactions, all other information for this area for the current audit was obtained only through management.
- We requested timely data about medical approvals from the Division of Medical Management's computer records. Although we easily obtained this information last year, this year we were instead provided five weeks later with a manually-prepared document that could not be relied on for audit purposes. Additionally, this document was provided to us by the Administration's Business and Finance Division rather than by its Division of Medical Management.
- The U.S. Social Security Administration would not permit us independent access to the State Online Query (SOLQ), which is a system that can verify Social Security numbers. This forced us to depend on the Department, which does have access, to perform all of our Social Security number verifications. As a result, the Department was aware of the transactions being tested. The Department then made alterations to the sample data in its computer systems that prevented us from completing our tests as planned. This action invalidated our sample and prevented us from reaching a conclusion. We were unable to determine if data originally given to us was faulty or if the current data was faulty.

In spite of these problems, we were able to obtain some information about the services we selected. We found:

- Non-emergency services apparently were provided to 274 undocumented aliens, or 79 percent of those tested. Although we were prevented by the Department's actions from completing our tests in this area, we estimate total costs in these cases were within a range of \$3,951,473 - \$5,141,726.

| | <u>Range</u> | |
|------------------|--------------|-------------------------------------|
| Adult Day Care | \$ | 40,738-----\$ 40,738 |
| Dental | | 1,385,417----- 1,495,629 |
| Nursing Home | | 2,332,883----- 3,276,084 |
| In-Home Services | | 125,622----- 252,617 |
| Personal Care | | 66,813----- 76,658 |
| | | <u>\$3,951,473-----\$ 5,141,726</u> |

- The other 73 clients, or 21 percent of those tested, were improperly identified in the Department's System as undocumented aliens. We were able to verify from SOLQ that these clients had valid Social Security numbers, which undocumented aliens would not have. Therefore, the clients were not undocumented aliens whose services had to be restricted to emergencies. This is an example of the inaccuracies in the Department's client eligibility database. Because the Department routinely takes no action on Social Security Administration notifications of invalid numbers, we can place no reliance on any of the Social Security numbers in the Department's records.

While performing allowability work for another part of our audit of Medicaid, we found treatments and procedures provided to other undocumented alien clients that did not appear to be allowable under the Alien Emergency Medical Program. We found the following procedures provided to clients identified by the Department as undocumented aliens.

| | |
|----------------------------------------------------|----------------|
| Routine infant and child health checks | \$352,624.72 |
| Supervision of normal pregnancy | \$2,015,257.21 |
| Routine postpartum follow-up | \$208,007.93 |
| Depressive disorder | \$10,897.92 |
| External hemorrhoids without complications | \$1,229.46 |
| Chronic renal (kidney) failure | \$2,912,551.65 |
| Breast pump kits | \$48,406.76 |
| Diapers/briefs | \$3,352.91 |
| Eye exams and treatments | \$99,420.25 |
| Farsightedness, nearsightedness, astigmatism, etc. | \$26,265.73 |
| Boys' dress eyeglasses frames | \$4,140.60 |

| | |
|------------------------------------------------------|--------------|
| Fitting and adjustment of glasses and contact lenses | \$29,961.18 |
| Hearing tests and comprehensive evaluations | \$791.54 |
| Massage | \$405.39 |
| Established patient-office or other outpatient visit | \$214,918.05 |
| Learning difficulties | \$126.46 |
| Menopausal or related issues | \$159.25 |
| Premenstrual tension syndromes | \$87.50 |
| Healthy Infant or child receiving care | \$2,992.24 |
| Calculation of radiation doses | \$6,609.56 |
| Influenza vaccine | \$1,904.40 |
| Therapeutic radiology | \$9,938.13 |
| Unwanted pregnancy | \$546.11 |
| Chemotherapy administration | \$10,433.03 |

The above amounts were the result of 95,068 medical procedures, 15,494 of which were provided to clients identified by the Department as undocumented aliens, even though we found they possessed Social Security numbers. Because only citizens and legal aliens possess valid Social Security numbers and because of existing control weaknesses, we do not know how many of these procedures were performed on eligible persons. However, the remaining 79,574 procedures were provided to people identified by the Department as undocumented aliens with no social security numbers. The total costs for all of these services combined were \$5,961,028.

Cause of Condition

We do not know why the Department denied us the access we needed to complete our audit. However, with regard to the results of the procedures we could complete, we believe the causes to be:

- Social Security numbers are not consistently verified prior to admitting clients into the Medicaid program. Further, the Department does not heed federal alerts notifying staff of invalid Social Security numbers
- The Department's accounting system does not differentiate undocumented aliens who have received emergency services from those who have received non-emergency services.
- When the Department enters an undocumented alien into its system in order to pay for emergency medical costs, it actually enters the client for a three-month period. During this time, it pays for all medical services provided to that client, whether emergency in nature or not. At the end of the three-month period, the client can be approved for an additional amount of time; this appears to occur continually, as we have seen clients in the system over the period of several years.

- Department regulations and instructions allow the provision of nursing facility care to undocumented aliens, without regard to the federal definition of emergency medical care.

Due to our lack of access to medical staff, we are unable to determine with reasonable assurance other causes for this condition. However, during our previous audit we found:

- Department staff stated the procedure manuals contain insufficient and unclear guidance and are often too technical for non-medical personnel to understand.
- In its eligibility manual, the Department lists certain medical diagnoses that are pre-authorized as emergencies. If a client who is an undocumented alien has a medical diagnosis that is not on the list, staff members are instructed to refer the case to the Department's medical staff. We found these referrals were not being made in a consistent manner.
- Medical consultants were slow to respond to staff questions about whether a condition is an emergency.

Effect of Condition

Because of an agency-imposed scope limitation, the State Auditor's Office did not have access to resources that would have allowed us to assess controls and to independently evaluate whether the Department was complying with Medicaid requirements in this area. Therefore, we cannot provide an opinion on compliance regarding allowable costs and eligibility of clients for Medicaid claims paid for undocumented aliens.

The cost of payments for such claims for the period of January 1, 2003 through December 31, 2003 was \$90,590,041. Due to timing issues, we were unable to determine how much was paid in claims for the fiscal year period, July 1, 2003 through June 30, 2004; however, we believe the calendar year expenditures are an accurate approximation of the fiscal year expenditures. Half of this amount, or \$45,295,021, was provided by federal Medicaid matching funds and the other half by state funds.

Recommendations

With respect to compliance with audit requirements, we recommend the Department:

- Ensure that the State Auditor's Office has timely access to the information and resources it needs to complete its audit.
- Ensure managers understand the role of independent audits in reporting on the Department's compliance with applicable laws and regulations, when continued receipt of the funds depends on such compliance.

- Revise its regulations regarding care in nursing facilities to conform to federal regulations.

With respect to strengthening internal controls, we recommend the Department:

- Develop internal controls that require employees to verify applicants' Social Security numbers and heed alerts sent by the Social Security Administration pertaining to invalid numbers.
- Develop clear and complete policy and procedure manuals.
- Establish internal controls that ensure staff members make consistent referrals to medical consultants for diagnoses that are not listed in the eligibility manual and controls that ensure medical consultants respond promptly.
- Develop an accounting system that will differentiate emergency from non-emergency procedures so that the appropriate funds can be used to pay for the designated services.
- Work with the U.S. Department of Health and Human Services to determine if any costs charged to Medicaid federal funds must be reimbursed as a result of this disclaimer.

Department's Response

The Department partially concurs with this finding.

- This is a finding that was repeated from the SFY 2003 audit, and Medical Assistance Administration (MAA) has made important progress since then. MAA has instituted a transitional policy for this program and established workgroups to research and recommend a permanent policy (See attachment A). We shared the proposal with SAO since providing appropriate services to undocumented aliens is very complex because of the rules concerning the clients and the systems issues documented by the auditor. Once a permanent policy is approved, the MAA then can implement all necessary changes.
- The procurement of the new Medicaid Management Information System (MMIS) will assist us in resolving issues cited by the auditors involving the receipt and verification of data. The new MMIS will allow DSHS to track Social Security Numbers faster and more accurately. It will lessen our reliance on manually produced data, and it will strengthen the tie between MMIS and the Automated Client Eligibility System (ACES).

- Although SAO indicates that federal rules governing services for undocumented aliens are clear, the interpretation of these rules is complex. These system issues and the complexity involved in interpreting federal laws related to undocumented aliens were the primary source of the problems encountered by the auditors, not the liaison system established by the Department.
- As a result of last year's audit and similar complaints about data problems, the Department instituted an audit liaison system to provide a quality review of all data requests and prevent further problems in this year's audit. This did not limit SAO access to the information and data it needed, but established specific procedures that would have ensured accurate and timely responses to SAO inquiries. The liaison was in position to see that appropriate staffs were identified for additional contacts, that SAO concerns were addressed promptly and effectively, and that data requests from SAO were clear and specific in order to speed their compilation and delivery.

Auditor's Concluding Remarks

Applicable Laws and Regulations

Disclaimer

RCW 43.09.310 states in part:

...The state auditor shall annually audit the statewide combined financial statements prepared by the office of financial management and make post-audits of state agencies. Post-audits of state agencies shall be made at such periodic intervals as is determined by the state auditor....

American Institute of Certified Public Accountants, Statement of Position 98-3, *Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards*, Paragraphs 10.43 and 10.44 states, in part:

The auditor is able to express on an unqualified opinion only if he or she has been able to apply all the procedures the auditor considers necessary in the circumstances. Restrictions on the scope of the audit – whether imposed by the client or by circumstances such as the timing of the auditor's work, an inability to obtain sufficient competent evidential matter, or an inadequacy of the accounting records – may require auditors to qualify their opinion or to disclaim an opinion.

When restrictions that significantly limit the scope of the audit are imposed by the client, the auditor generally should disclaim an opinion on compliance.

The Office of Management and Budget's Circular No. A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, Section .500(e) states:

The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with section .315(b)....

Allowability and Eligibility

Section 1903 of the Act (41 U.S.C., Section 1396(b)) provides in part:

- (1) No payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or other wise permanently residing in the United States under color of law.
- (2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if-
 - (A) such care and services are necessary for the treatment of an emergency medical condition of the alien,
 - (B) such alien otherwise meets the eligibility requirement for medical assistance...and
 - (C) such care and services are not related to an organ transplant procedure.

Washington Administrative Code 388-500-0005 describes emergency services as follows:

Emergency medical condition means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

Placing the patient's health in serious jeopardy;
Serious impairment to bodily functions; or
Serious dysfunction of any bodily organ or part.

It also defines emergency medical expense requirements as follows:

A specified amount of expenses for ambulance, emergency room or hospital services, including physician services in hospital, incurred for an emergency medical condition that a client must incur prior to certification for the medically indigent program.

The Department's *A-Z Eligibility Manual* describes what constitutes an emergency medical condition. It states, in part:

1. ...In order to be eligible for the Alien Emergency Medical (AEM) program, a person must:... a. Have an emergency medical condition. (Refer to the list of emergency medical conditions in the Medically Indigent section); ...

Washington Administrative Code 388-438-0110 describes alien emergency medical as follows:

An alien who is not eligible for other medical programs, is eligible for emergency medical care and services:

- (1) Regardless of their date of arrival in the United States;
- (2) Except for citizenship, meets Medicaid eligibility requirements as described in Washington Administrative Code 388-505-0210, 388-505-0220 or Washington Administrative Code 388-505-0110; and
- (3) Limited to the necessary treatment of an alien's emergency medical condition as defined in Washington Administrative Code 388-500-0005, except that organ transplants and related medical care services are not covered.

Washington Administrative Code 388-424-0010 describes alien status and eligibility requirements for medical benefits. Paragraph (3) states the extent of those services:

An alien who would qualify for Medicaid benefits but is ineligible solely because of his or her alien status, can receive medical coverage as follows:

- (a) State-funded categorically needy (CN) scope of care for ... (i) Pregnant women, as specified in Washington Administrative Code 388-462-0015

Administrative Code 388-462-0015 states that care to pregnant women who do not meet eligibility requirements due to citizenship status will be provided under state funded programs only:

A pregnant woman is eligible for CN scope of care under the state-funded pregnant woman program if she is not eligible for programs in subsection (2) of this section due to citizenship, immigrant or Social Security Number requirements.

Revised Code of Washington 43.20A.550 states that rules and regulations in conflict with federal law are deemed inoperative:

... Any section or provision of law dealing with the department which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, such conflicting part of chapter 18, Laws of 1970 ex.sess is declared to be inoperative solely to the extent of the conflict.